

1 **MEMORANDUM OF UNDERSTANDING**
2 **Between the**
3 **THE STATE OF HAWAI'I DEPARTMENT OF TRANSPORTATION AND**
4 **THE UNIVERSITY OF HAWAI'I for the Benefit of Ka Haka 'Ula O Ke'elikōlani College of**
5 **Hawaiian Language and Anthropology Department ("Contractors")**
6 **Regarding Impact Mitigation For the**
7 **QUEEN KA'AHUMANU HIGHWAY WIDENING PROJECT, PHASE 2**
8

9 This Memorandum of Understanding (hereafter "MOU"), made and entered into this
10 23rd day of September, 2019, but effective as of 10/1/19 (hereafter the
11 "Effective Date") by and between the STATE OF HAWAI'I (hereafter "HDOT"), by its Director
12 of Transportation, whose business and mailing address is the Ali'i'aimoku Building, 869
13 Punchbowl Street, Honolulu, Hawai'i 96813 and the UNIVERSITY OF HAWAI'I, a body
14 corporate and public corporation, whose business and mailing address is Bachman Hall, 2444
15 Dole Street, Honolulu, Hawai'i 96822 (hereafter the "University").
16

17 **WITNESSETH THAT:**

18 WHEREAS, the Federal Highway Administration ("FHWA") has funded the HDOT
19 highway projects known as Queen Ka'ahumanu Highway Intersection Improvements for the
20 Kaloko-Honokōhau National Historical Park (hereafter the "Kaloko Intersection Project"), and
21 the Queen Ka'ahumanu Highway Widening, Kailua to Keāhole (hereafter the "Queen K
22 Project") (Kaloko Intersection Project and Queen K Project are collectively the "Projects") and
23 described in a May 1996 Final Environmental Assessment ("FEA") which contains a FHWA
24 Finding of No Significant Impact determination dated June 10, 1996 ("FONSI"); and

25 WHEREAS, the HDOT initiated and successfully completed the first phase of the
26 Queen K Project between Henry Street and Kealakehe Parkway in 2009; and

27 WHEREAS, the HDOT initiated and successfully completed the Kaloko Intersection
28 Project in 2018; and

29 WHEREAS, the HDOT initiated and successfully completed the second phase of the
30 Queen K Project between Kealakehe Parkway and the Keāhole Airport Access Road in 2018;
31 and

32 WHEREAS, the HDOT commissioned a supplemental Archaeological Inventory Survey
33 titled "*Archaeological Inventory Survey for the Proposed Queen Ka 'ahumanu Highway*
34 *Widening Phase 2 Project, Kalaoa, Kaloa-'O'oma, 'O'oma 2, Kohanaiki, Kaloko, Honokōhau 1-*
35 *2 and Kealakehe, North Kona District, Hawai'i Island (2012) ("AIS")* in response to concerns
36 raised by the National Park Service (NPS) and certain Native Hawaiian Organizations; and

37 WHEREAS, the FHWA, in association with HDOT, consulted with NPS officials at
38 Kaloko-Honokōhau National Historical Park, the Ala Kahakai National Historic Trail, the
39 Historic Hawai'i Foundation, Royal Order of Kamehameha, Kona Hawaiian Civic Club, Office
40 of Hawaiian Affairs and Makani Hou o Kaloko Honokōhau regarding the impacts of the
41 Projects; and

42 WHEREAS, partly as a result of such consultations, the FHWA and HDOT agreed that
43 the adverse effect of the Projects will require HDOT to consider implementing measures that will
44 promote educational and other activities ("Education Program") that will mitigate such adverse
45 effect and help perpetuate the Hawaiian culture; and

46 WHEREAS, the Advisory Council on Historic Preservation (ACHP), the FHWA, and the
47 Hawaii State Historic Preservation Office (SHPO) entered into a Memorandum of Agreement
48 (MOA) in 2015; and

49 WHEREAS, this MOU is to complete stipulation 5B of the MOA; and

50 WHEREAS, in discussions with the University, HDOT, FHWA, and Consulted Parties
51 (CP) identified the Kohala Center as an entity capable of helping to administer the MOU and to
52 assist with of the Education Program, and

53 WHEREAS, implementation of these measures requires the specialized expertise of the
54 University or other capable entity, and

55 WHEREAS, the HDOT agrees that the Kohala Center is a capable entity and adds value
56 to the Program, and

57 WHEREAS, the University has also determined that the Kohala Center is a capable
58 entity, is agreeable to utilize the Kohala Center to assist in the implementation of the Education
59 Program, and has determined the Kohala Center to be eligible as a second-tier sub-recipient, and

60 WHEREAS, HDOT has identified its desire to implement the following programs to
61 mitigate the adverse effect of the Projects (collectively the "Program"):

- 62 a. Native Hawaiian archaeology/anthropology. Fund and support continuing education in
63 the study of Native Hawaiian archaeology and/or anthropology;
- 64 b. Native Hawaiian studies scholarship program. Fund scholarships, fellowships, or research
65 activities of undergraduate or graduate work in Native Hawaiian Studies at the University
66 of Hawai'i;
- 67 c. Hawaiian immersion/charter school support. Fund and support local Hawaiian immersion
68 and charter schools on the island of Hawai'i;
- 69 d. Recording of oral histories. Fund and support the recording of oral histories in the
70 Kekaha region; and

- 71 e. Cultural programming support. Fund and support cultural programming that captures and
72 interprets the Native Hawaiian culture in the Kekaha region; and

73 WHEREAS, the University and the Kohala Center is identified as entities that could assist
74 with implementing the Program;

75 NOW, THEREFORE, the HDOT and the University agree to implement the Program in
76 accordance with the following terms and conditions as part of the HDOT's efforts to mitigate the
77 impact of the Projects on historic properties:

78 1. HDOT responsibilities. HDOT shall be responsible for the following:

- 79 a. Furnish Program funding. Furnish to the University \$1,250,000 to accomplish the
80 goals of the program which shall be expended over a period of five years.
- 81 b. Assist in obtaining additional Funding. If it appears that there will not be a sufficient
82 amount of Available Funding to continue the Programs for the remainder of the term
83 of this MOU, HDOT will assist the University in obtaining other additional
84 governmental funding to continue the Programs or consider the Program as
85 completed.
- 86 c. Continue the Programs. If HDOT and the University agree that it will be of mutual
87 benefit and in the public interest to continue the Programs beyond the term of this
88 MOU, HDOT and the UH agree to cooperate and work together to obtain additional
89 governmental funding to so continue the Programs beyond the term of this MOU.

90 2. University responsibilities. Subject to and limited by the Available Funding and the
91 University's Funding Limitation (as defined herein), the University shall be responsible
92 for receiving and using the Available Funding received from HDOT for the following
93 Programs:

- 94 a. Native Hawaiian archaeology/anthropology. The University shall initiate or integrate
95 into an existing curriculum a continuing education curriculum emphasizing the study
96 of Native Hawaiian archaeology and/or anthropology. The objective of this
97 curriculum is to advance knowledge of the Native Hawaiian culture on the Big Island,
98 particularly the Kekaha region of West Hawai'i. The University shall identify an
99 individual to lead this effort. A curriculum plan or course outline shall be prepared to
100 incorporate the Native Hawaiian archaeology/anthropology curriculum into the
101 University's existing curriculum in accordance with the University's usual and
102 customary practices. The UH shall provide an annual report at the end of each fiscal
103 year for the term of this MOU detailing enrollment and course and program
104 evaluation. This report can be incorporated into and made a part of the University's
105 annual report to the HDOT described in subparagraph 2 below.
- 106 b. Native Hawaiian studies scholarships. The University shall establish scholarships,
107 fellowships, and/or research grants for undergraduate or graduate students at the
108 University specializing (majoring) in Native Hawaiian Studies. The objective of this
109 scholarship program is to advance knowledge of the Native Hawaiian culture on the
110 island of Hawai'i, particularly the Kekaha region of West Hawai'i, by providing
111 learning opportunities. The University shall report the names of the individuals

receiving support as part of the scholarship program to the Director of Transportation at the end of each fiscal year during the term of this MOU. This report can be incorporated into and made a part of the University's annual report to the HDOT described in subparagraph 2f below.

- c. Hawaiian immersion/charter schools support. Within the parameters of the University's mission and to the extent permitted by applicable laws, the University shall, with Available Funding, provide youth in local Hawaiian immersion and charter schools on the island of Hawai'i with education enrichment and similar program opportunities for a period of five (5) years.
 - d. Recording of oral histories. The University shall fund and support the recording of oral histories in the Kekaha region of the island of Hawai'i. These oral histories program shall be carried out over a period of five (5) years, at an average of five (5) individuals within each consecutive biennium period over the period of five years. The oral histories program should be directed towards capturing and describing the life of persons who have lived and/or worked in the Kekaha area for many years. The documentation shall be made via audio recording and digital video. Verbatim transcripts are required. The University shall obtain the prior written consent of the interviewee to participate in the interview. A copy of the completed interview shall be transmitted to the Kailua-Kona Public Library, the Kaloko- Honokōhau National Historic Park, and the Oral History Program at the University of Hawai'i at Mānoa.
 - e. Cultural programming support. Within the parameters of the University's mission and to the extent permitted by applicable laws, the University shall, with the Available Funding, support cultural programming in the Kekaha region of the island of Hawai'i for the West Hawaii community. The focus of the cultural programming shall be directed to the arts and media (visual, tactile, auditory, and sensory, etc.) that capture and interpret Native Hawaiian culture in the Kekaha region. The University shall solicit academic year proposals for such programming prior to the start of each year during the term of this MOU. Up to five candidates shall be commissioned to implement their proposals.
 - f. Annual Report. The University shall prepare and submit to HDOT an annual report at the close of each fiscal year showing how the funds made available by HDOT and FHWA were dispersed, objectives achieved, the identity of the recipients, and any changes to the proposal for the upcoming year. The report shall be transmitted to the Director of Transportation.
3. Unused funding. The University shall implement and carry out the Program, including the above described component parts, within the five (5) year term. The University shall return to HDOT all funding not used, committed, or spent within 90 days at the end of this MOU.
 4. Amendments. Any signatory to this MOU may request that it be amended, whereupon the other party shall consult with the proposing party to discuss the nature of such amendment. Amendments to this MOU shall be in writing and signed by HDOT and the University.

- 154 5. Termination. If any signatory to this agreement determines that its terms will not or
155 cannot be carried out, that party shall immediately consult with the other signatory to
156 attempt to develop an amendment per Stipulation 5, above. If within thirty (30) days or
157 another time period agreed to by the approving signatories an amendment cannot be
158 reached, any party to this agreement may terminate the agreement upon written
159 notification to the other signatory.
- 160 6. Assignment. Neither party may assign or otherwise transfer any interest, right, or
161 obligation under this Agreement without the prior written consent of the other party.
- 162 7. Contact. The University's point of contact (POC) for communications under this MOU is
163 Keiki Kawai'ae'a, who can be reached by e-mail at keiki@hawaii.edu. HDOT's POC for
164 communications under this Agreement is Julann Sonomura, Design Engineer, 50
165 Makaala Street, Hilo, HI 96720. Phone 808-933-8866. E-mail:
166 julann.m.sonomura@hawaii.gov. The University POC shall maintain digital copies of all
167 documents relative to the MOU and provide copies to HDOT upon request. The
168 University POC shall be responsible for receiving and transmitting annual reports to the
169 HDOT POC for distribution to appropriate government agencies. The parties to this
170 MOU shall exchange contact information for the University POC and the HDOT POC
171 and shall keep each other informed of any changes in either POC.
- 172 8. Funding limitation. To the extent that the University is (1) obligated to perform under this
173 MOU, (2) obligated to make any payments under this MOU, or (3) deemed liable under
174 this MOU, the University's obligation and liability under this MOU, and the University's
175 ability to perform hereunder, particularly to pay any amount of monies, is limited to that
176 which is permitted by law, and is subject to the precondition that funds appropriated,
177 allotted or otherwise properly made available for the purpose of such performance or to
178 cover such liability, which under this MOU is \$1,250,000 made available to the
179 University by HDOT and FHWA (hereafter the "University's Funding Limitation"). The
180 University shall not be obligated to pay any more of the University's Funding Limitation
181 toward any obligation under this MOU than was actually made available to the
182 University by HDOT and the FHWA through Task Order.
- 183 9. Entire agreement. This MOU constitutes the entire agreement between the parties hereto,
184 with respect to the subject matter hereof, and supersedes all other prior or concurrent oral
185 or written letters, agreements, and understandings.
- 186 10. No third party rights. The parties to this MOU agree that this MOU shall not be deemed
187 to run to the benefit of any third party.
- 188 11. Governing law. This MOU shall be governed by and construed and interpreted in
189 accordance with the laws of the State of Hawai'i.
- 190 12. Severability. If any provision of this MOU shall be adjudged by a court of competent
191 jurisdiction to be void, invalid, illegal, or unenforceable for any reason, the same shall in
192 no way affect (to the maximum extent permissible by law) any other provision of this
193 MOU, the application of any such provision under circumstances different from those
194 adjudicated by the court, or the validity or enforceability of this MOU, as a whole, and to

the extent necessary, this MOU shall be construed as if such void, invalid, illegal, or unenforceable provision had never been contained herein.

13. Counterpart signatures. The delivery of a signed copy of this MOU by facsimile or by email shall be as effective as the delivery of a signed original. This MOU may be signed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this MOU, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.
 14. Conflict. In the event of a conflict between the terms and conditions of this MOU and the terms and conditions of any of the exhibits attached to this MOU, the terms of this MOU shall govern and control.
 15. Waiver. Any waiver of the terms, conditions, or provisions of this MOU or a party's rights or remedies under this MOU must be in writing to be effective. Failure, neglect, or delay by a party to enforce the terms, conditions, or provisions of this MOU or such party's rights or remedies at any time, will not be construed as a waiver of such party's rights under this MOU prejudice and such will not party's in any right way to take affect any the validity subsequent of the action. whole No or any exercise part or of this enforcement MOU or by any party of that party's rights or remedies under this MOU will preclude the enforcement by such party of any of its other rights or remedies that are available under this MOU or by law.
 16. Headings. The headings and captions used herein are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which they may pertain.
 17. Authority. HDOT the University acknowledge and agree that the University may be required to obtain the approval of the University's President and the University's Board of Regents to enter into this MOU. If such approvals are not obtained, HDOT and the University agree to engage in negotiations to amend this MOU to address such non-approval.
 18. Sub-award to the Kohala Center: The University shall provide funding to the Kohala Center under a sub-award agreement, with the University as a recipient and a pass-through agency, in accordance with applicable provisions of CFDA 20.205. The University shall administer, monitor and manage all work performed by the Kohala Center, for all agreed scope of work, schedule, and budget defined in a sub-agreement between the University and the Kohala Center.
- Copies of the sub-agreement and sub-award documents shall be provided to the HDOT for review prior to execution, and final executed copies shall be furnished to the HDOT. The work to be implemented by the University and the Kohala Center shall be clearly defined and described in the sub-agreement document.

IN WITNESS WHEREOF, the parties hereto have cause this MOU to be signed as of the day, month, and year first above written, to be effective as of the Effective Date.

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238 STATE OF HAWAI'I, by its Director of Transportation

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240 By: 
241 Jade T. Butay, Director of Transportation

Date: 9/23/19

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243

244 UNIVERSITY OF HAWAI'I

245

246 By: 
247 Leonard R. Gouveia, Jr., Director, Office of Research Services

Date: JUL 23 2019

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